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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,042	02/05/2002	Cory O. Nykoluk	10759-00159	4190

7590
Patrick W. Rasche
Armstrong Teasdale LLP
Suite 2600
One Metropolitan Square
St. Louis, MO 63102

03/06/2007

EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/072,042

Applicant(s)

NYKOLUK ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the luggage with two curved arms spaced apart with a locking mechanism in claims 51, 65, 77, and 86 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 51, 60, 65, 73, 77, and 86-87 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the embodiment of a locking handle

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with two curved arms spaced apart from one another (cl. 51, 77, 65, 86, 87), and the rigid base (cl. 60, 73). This is a new matter rejection.

3. Claims 47-48, 52-59, 61, 66-72, and 74-87 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu (6508344). Lu teaches a towing member having an arm having distal end and proximal end with an axial length, a towing handle 20, a locking mechanism located proximate the handle movable between a locked position and an unlocked position comprising a movable locking element defining a slot 325 and a locking protrusion 50 extending through the slot, and a release mechanism as claimed.

With respect to the non-extendable portion, it is submitted that there is inherently a non-extendable portion so that the two arms in Lu can be accommodated.

Regarding claim 57, note that there is a face facing upward in Lu (adjacent the distal peripheral edge of portion 35).

Regarding claim 57 and 71, note the channels 421 between the locking protrusions.

Regarding claim 63, note that the tube is curved forward as claimed.

Regarding claim 71, note the channels 712 in Lu.

4. Claims 47-59, 61-72, and 74-87 are under 35 U.S.C. 103(a) as being unpatentable over Lu '344 in view of Miyoshi (5908093). To the degree it is argued that Lu fails to teach a non extendable portion, It would have been obvious to one of ordinary skill in the art to provide an extendable portion as taught by Miyoshi (Fig. 5, portion 55A) to provide a connection to the luggage.

Regarding claim 49, it would have been obvious to one of ordinary skill in the art to provide curved arm portions to enable one to tow the luggage easily.

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5. Claims 60 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu rejections, as set forth above in paragraphs 3 and 4, and further in view of either Tsai (5524920) or Hung-Hsin (5374073). It would have been obvious to one of ordinary skill in the art to provide a rigid back by Tsai (portion 1), or Hung-Hsin (portion 31) to provide a desired base for the luggage.

Response to Arguments

6. Applicant's argument along with declarations regarding Lu'344 and Mao'706 have been considered but they are not persuasive.

Applicant asserts that that the specification contemplate the claims 51, 60, 65, 73, 77, and 86-87 in the specification as noted on page 10. Although the handle in claims 51 with a locking mechanism (directed to the figures 12-16) are attachable to the handle in the first embodiment, which is the single pole embodiment. The Specification never contemplate such locking mechanism in the embodiments of fig. 8. It is unclear how can one can adapt the handle with locking mechanism in figures 12-16 in to the embodiment in fig. 8, e.g., a) it seems that there is an immovable rod 142 as compared with a movable rod 238 (for operating the button), the lock in fig. 12 lock in one axis while the embodiment of fig. 8 has two unlockable axis.

With respect to the drawing objection under 37CFR§ 1.83 (a) (emphasis added):

Content of drawing.

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

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The invention specified in claim 51 requires an embodiment with locking mechanism and the two curved arms spaced apart. Thus, the invention showing the locking mechanism and the two curved arms spaced apart must be shown.

It is noted that the CIP of this application 10238390 showing an embodiment with a locking mechanism and two curved arms spaced apart. However, this is a different embodiment presented in a CIP and the locking mechanism is entirely different from the embodiment shown in Fig. 12-16 in the present application. It seems that applicant to import new matter from a CIP into this present application.

The original specification fails to teach a rigid base. Noted that one can construct such a base from non-rigid base as well.

As set forth in the previous Office Action, the affidavit dated 07/15/06 is ineffective. It is noted that the figures shown in the declaration fails to show the locking structure show in Lu'344.

It is noted that applicant asserts that there are similarities between the evidence of the Declaration and the invention disclosed in Lu'344. The examiner submits there are no locking structures disclosed in these appendices. The examiner cannot determine similarities in absent of these locking structures.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
Art Unit 3727

